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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**FEDERAL COMMUNICATIONS COMMISSION**  
**OFFICE OF THE SECRETARY**

In Re Applications of

**DIXIE BROADCASTING, INC.**

For Renewal of Licenses of  
Stations WHOS(AM) and WDRM(FM),  
Decatur, Alabama

) MM DOCKET NO. 92-207  
)  
) File No. BR-881201XN  
) File No. BRH-881201XO  
)  
)

To: Administrative Law Judge  
Arthur I. Steinberg

**MASS MEDIA BUREAU'S**

### Summary

This renewal proceeding involves issues to determine whether Dixie Broadcasting, Inc., licensee of Stations WHOS (AM) and WDRM (FM), Decatur, Alabama, engaged in misrepresentations to the Commission and/or was lacking in candor, and whether and to what extent the stations complied with the affirmative action provisions specified in § 73.2080 of the Commission's Rules.

Based on the evidence adduced at hearing, the Bureau concludes that the care that Dixie exhibited in responding to multiple Commission inquiries about its EEO program was so utterly lacking that the inaccurate statements it made to the Commission were tantamount to intentional misrepresentations, in violation of § 73.1050 of the Commission's Rules. The Bureau also concludes that Dixie's EEO program during the entire license term was so informal as to be virtually nonexistent and generally ineffectual.

Pursuant to an agreement reached between the parties in this proceeding, it is the joint recommendation of Dixie and the Bureau that the Presiding Judge grant Dixie's renewal applications subject to specific periodic reporting conditions, impose a forfeiture against Dixie in the amount of \$50,000, and require Dixie to file early renewal applications for WHOS (AM) and WDRM (FM).

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### Preliminary Statement

1. By Hearing Designation Order, 7 FCC Rcd 5638 (1992) ("HDO"), the Commission designated for hearing the above-captioned applications of Dixie Broadcasting, Inc. ("Dixie"), for renewal of licenses of Stations WHOS(AM) and WDRM(FM), Decatur, Alabama, on the following issues:

(a) To determine whether the licensee of Stations WHOS(AM)/WDRM(FM) made misrepresentations of fact or was lacking in candor and violated § 73.1015 of the Commission's Rules, 47 C.F.R. § 73.1015, with regard to the stations' EEO program and documents submitted in support thereof;

(b) To determine the extent to which the licensee of Stations WHOS(AM)/WDRM(FM) complied with the affirmative action provisions specified in § 73.2080(b) of the Commission's Rules, 47 C.F.R. § 73.2080(b);

(c) To determine whether, in light of the evidence adduced pursuant to the foregoing issues, a grant of the subject renewal applications would serve the public interest, convenience, and necessity.

HDO at ¶ 15.

2. In accordance with § 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the above-referenced issues were placed on Dixie. See HDO at ¶ 16.

3. The HDO further stated that if it is determined that the hearing record does not warrant denial of the above-captioned renewal applications, then it shall be determined whether Dixie willfully or repeatedly violated § 73.1015 of the Commission's

Rules, and if so, whether a monetary forfeiture should be imposed on Dixie. See HDO at ¶ 20.

4. An evidentiary admissions session was held in Washington, D.C., on February 17, 1993. By Order, FCC 93M-78 (released February 18, 1993), the Presiding Judge changed the location of the hearing from Decatur, Alabama, to Washington, D.C. Hearing sessions were held in Washington, D.C., on February 23, 1993 through March 2, 1993. The hearing record was closed on March 2, 1993.

5. By Order, FCC 93M-89 (released March 5, 1993), the Presiding Judge set April 16, 1993 as the date for submission by the parties of their respective Proposed Findings of Fact and Conclusions of Law. In accordance with the referenced Order, the Bureau hereby submits its Proposed Findings of Fact and Conclusions of Law.

## Proposed Findings of Fact

### I. Background

6. J. Mack Bramlett ("Bramlett") has been associated with WHOS(AM) and WDRM(FM) ("Stations") since 1962, when he became the Stations' Chief Engineer. Since 1976, Bramlett has been General Manager of the Stations, and Vice President, a director, and a 10% voting shareholder of Dixie. (Tr. 296, 299).

7. Bramlett is an engineer by training. He holds a diploma, granted in 1961, from DeVries Technical Institute. He also holds an FCC First Class Radiotelephone Operator License, first granted to him in 1961. (Tr. 296).

8. Prior to joining Dixie, Bramlett was Station Manager for a UHF television station in Huntsville, Alabama. He also performed technical work for other broadcast stations on an independent contractual basis. (Tr. 297, 299).

9. Bramlett is also an experienced businessman. In the late 1970's, Bramlett organized a local bank and, for two or three years, served as its Chairman of the Board. He also was an officer, director, and owner of Bramlett Engineering (later changed to Bramlett Electronics), a company that designed and manufactured traffic control systems. Bramlett sold his company



Ex. 1, p. 2-3). Bramlett continued to be responsible for establishing and executing the Stations' EEO program, although he never read the Commission's EEO rules at any time between 1982 and 1989. (Tr. 325, 327; Dixie Ex. 1, p. 2).

13. In August 1982, Bramlett retained Nathan Tate, Sr. ("Tate"), an experienced black broadcaster, to change WDRM(FM)'s 6 p.m. to 6 a.m. entertainment programming to a so-called "urban format" designed to attract minority listeners.<sup>1</sup> (Tr. 327-328; Dixie Ex. 19, p. 1). Tate was given the titles of Program Director and Sales Manager. (Tr. 328).

14. In April 1983, after only eight months, Tate left Dixie to start a fast-food business. (Tr. 261, 781, 784). Absent Tate's guidance, the urban format lost momentum, and, in September 1983, it was discontinued. (Tr. 360). During the relatively brief (approximately one year) period that WDRM(FM) utilized an urban format, Dixie hired six minority individuals,

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<sup>1</sup> Bramlett maintains that Tate was an "employee" of Dixie. However, Dixie neither withheld income nor Social Security taxes from checks made payable to Tate for the services he rendered which was its normal practice with employees. Moreover, although it had payroll records for other employees, Dixie had no such records for Tate. Additionally, when Tate was asked during redirect examination whether he considered himself to be a full-time employee of Dixie, Tate responded by saying only that he had full-time responsibilities. The Bureau submits that based on the record evidence, Tate was an independent contractor who should not be counted among the total number of minority hires during



in addition to Tate.<sup>2</sup> Tate solicited the personnel for the urban format and recommended them to Bramlett. (Tr. 342-347, 776; MMB Ex. 12, p. 5; Dixie Ex. 4. pp. 12-14). All of the minority employees who were hired during the urban format period voluntarily left Dixie either before or shortly after the format on WDRM(FM) was changed to country music on a full-time basis. (MMB Ex. 12, p. 5). At the same time, WHOS(AM), which had been broadcasting with a country music format in 1982, changed to gospel programming. (Tr. 360).

15. Bramlett believes that Dixie's EEO program during the 1982 to 1983 urban format period was effective. He based this belief on the fact that minorities were employed by the Stations. (Tr. 349-350).

16. From September 1983 to July 1986, Dixie's basic EEO practices remained essentially the same. (Tr. 368). Announcer positions continued to be filled by drawing from an ever-changing group of unsolicited applications on file at the Stations or by simply hiring the first individual who might walk in the door at the right moment. (Dixie Ex. 1, p. 4). On occasion, Dixie ran newspaper advertisements announcing job openings, but this was the exception, rather than the rule. Non-announcer positions

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<sup>2</sup> The six minority individuals, and the duration of their employ at Dixie (shown in brackets) were: Bruce Hill [11-months], Ricky Patton [seven months], Alfred Hardy [10-months], Carla Snell [two-months], Willie Acklin [two weeks], and Bernard Powell [one month]. (MMB Ex. 12, p. 5).

were ordinarily filled through referrals, although newspaper advertisements were sometimes employed and educational institutions were occasionally contacted. (Dixie Ex. 1, p. 4).

17. Although Bramlett claims that Dixie's EEO program remained effective in terms of recruitment efforts during the period from September 1983 to July 1986, he concedes it was not effective in terms of the number of minorities who were hired during that time. In fact, Dixie hired no minorities in any capacity, either full-time or part-time, during the nearly three-year period following the change in format on WDRM(FM) from urban to country music. (Tr. 365-366; Dixie Ex. 12, p. 5). By contrast, 37 persons,<sup>3</sup> all white, joined Dixie during this time in a variety of professional, managerial, clerical, and sales positions. (MMB Ex. 12, p. 5). Bramlett blamed the dearth of minority hires from 1983 to 1986 on Dixie's inability to find qualified people. (Tr. 366).

18. In January 1986, Dixie was granted Commission approval to relocate the transmitter for WDRM(FM) closer to Huntsville, Alabama. As a result of this move, which also occurred in 1986, WDRM(FM)'s signal reached a significantly larger audience than had previously been possible. (Dixie Ex. 1, p. 5).

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<sup>3</sup> This number includes 29 persons identified as hires, as well as eight others identified as trainees. Dixie provided no rational explanation as to why persons employed as "trainees" should not be counted among the Stations' "hires."

19. In an attempt to take advantage of WDRM(FM)'s expanded coverage, Dixie opened a Huntsville sales office. In August 1986, Dixie hired its first minority employee in nearly three years.<sup>4</sup> That worker, however, left Dixie's employ just seven months later, in March 1987, when Dixie closed its Huntsville office. (Dixie Ex. 4, p. 9).

20. Dixie did not hire another minority person until February 1989.<sup>5</sup> During the intervening 30 months, however, some 37 persons,<sup>6</sup> all white, joined the Stations in a variety of professional, managerial, technical, clerical, and sales positions. (MMB Ex. 12, pp. 6, 9).

21. Despite the paucity of minority hires between 1986 and the end of the license term, Bramlett testified that the Stations' EEO program became more effective in terms of recruitment efforts than it had been during the years 1982 to 1986. According to Bramlett, advertisements that Dixie placed in Huntsville newspapers produced more and better qualified

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<sup>4</sup> The individual is identified as Gwendolyn Stephenson. (Dixie Ex. 4, p. 14; Dixie Ex. 12, p. 5). Although Bramlett and his wife testified that Stephenson was, for EEO reporting purposes, a manager, (Tr. 532, 636; MMB Ex. 12, p. 5), Stephenson's relatively modest salary (MMB Ex. 11, p. 189; Tr. 637) and Dixie's 1987 Annual Employment Report show she was a clerical employee. (MMB Ex. 19, p. 23).

<sup>5</sup> The employee is identified as Kathy Jordan. (Dixie Ex. 12, p. 5).

<sup>6</sup> This number includes 31 hires as well as six trainees.

applicants than in previous times, although Dixie retained few of the applications. (Tr. 385, 388-389). Bramlett also thinks that job announcements that Dixie sent to a local college may have generated some applications. (Tr. 390-391).

22. Dixie hired a total of 104 persons over the license term. This number included nine minority individuals, all of whom were Black. Seven of the nine minority employees were hired in the first year of the license term, during which time WDRM(FM) operated with an urban format. The other two minorities were hired over the course of the remaining 5 1/2 years of the license term, during which time Dixie had nearly 75 hiring opportunities.

### III. Misrepresentation Issue

#### A. Renewal Applications

23. On December 1, 1988, Dixie's communications counsel, Daniel Van Horn ("Van Horn"), of the law firm of Arent, Fox, Kintner, Plotkin & Kahn, filed the captioned renewal applications for WHOS(AM) and WDRM(FM).<sup>7</sup> Attached to the renewal applications was Dixie's Broadcast EEO Program Report (FCC Form 396) ("EEO Program"). (MMB Ex. 1).

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<sup>7</sup> Dixie retained the law firm of Arent, Fox, Kintner, Plotkin & Kahn to represent it before the Commission in 1984. Prior to that time, Dixie was represented before the FCC by the law firm of Fowler & Myers. (Tr. 301-302).

24. The EEO Program represented that Dixie had hired a total of 16 persons, none of whom was a minority, during the reporting year which extended from November 1, 1987 to November 2, 1988. The EEO Program further indicated that Dixie had received no minority referrals during the reporting year from advertisements or from either of the educational institutions that it contacted, and that Dixie had not contacted any minority organizations. (MMB Ex. 1, pp. 3-4). The recruitment information in the EEO Program was based solely on recollection because Dixie had not maintained adequate records of its recruitment efforts. (Dixie Ex. 1, p. 6-7; Tr. 402).

25. Although Dixie had minority hires during the license term, the EEO Program made no such representation. (MMB Ex. 1, p. 6). Bramlett could not explain this fact. (Tr. 414).

26. On December 7, 1988, Van Horn sent Bramlett a letter memorializing a conversation they had about Dixie's EEO Program. Van Horn stated in the letter that he would not be surprised if the Commission were to question Dixie's EEO Program because of the absence of minorities on the staff and the apparent absence of substantial outreach efforts to attract minority applicants. Van Horn urged Bramlett to compile mitigating evidence and develop a plan so that the Stations would be more affirmative in their future recruitment of minorities. (MMB Ex. 16).

27. Bramlett was not "overly concerned" with Van Horn's advice at the time because he believed Dixie had "a good EEO program." (Tr. 408). Nevertheless, in January 1989, in direct response to Van Horn's letter, Bramlett ordered "A Broadcasters

between 1983 and 1988.<sup>8</sup>

29. Bramlett learned that the NAACP had filed its Petition to Deny in a telephone call from Van Horn. Bramlett was horrified, surprised, hurt, and angered at the news because he remembered that Dixie had hired minorities. (Tr. 422-423). At the time that he learned about the petition, Bramlett did not check Dixie's AERs to verify the accuracy of the NAACP's allegations. (Tr. 424-425).

30. Van Horn introduced Bramlett to Susan A. Marshall ("Marshall"), by telephone in connection with her preparation of an Opposition to the NAACP's Petition to Deny. (Tr. 134-135, 431). Marshall had been practicing communications law at the Arent, Fox law firm since 1978. Her practice included EEO matters. (Tr. 124-130).

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<sup>8</sup> Dixie's AERs for 1983 through 1988 (plus two other reporting years, 1982 and 1989) are contained in MMB Ex. 19. The number of minorities reported in each is indicated below:

<u>AER Year</u>	<u># Minorities Reported</u>	<u>MMB Ex. 19, pp.</u>
1982	0	1-4
1983	1 (part-time)	5-8
1984	0	9-12
1985	0	13-16
1986	0	17-20
1987	0	21-24
1988	0	25-26
1989	1 (full-time)	27-28

31. Marshall initially familiarized herself with Dixie by examining Van Horn's Dixie file. She also reviewed Dixie's 1988 renewal applications and Dixie's AERs during the license term. (Tr. 138). Marshall does not recall seeing Van Horn's December 7, 1988, letter to Bramlett. (Tr. 142).

32. Marshall discussed the Petition to Deny with Bramlett.

Bramlett told her that Dixie had in fact intended to deny



34. On April 14, 1989, Van Horn and Marshall filed Dixie's Opposition to the NAACP's Petition to Deny. (MMB Ex. 4, pp. 2-34; Tr. 437-438). The Opposition incorporated the information that Bramlett had provided about the number and identity of minority hires over the license term. The Opposition also reported the error in Dixie's EEO Program concerning the number of hires during the one-year reporting period. The Opposition acknowledged that no minorities had been reflected in the AERs during the license term. However, the Opposition asserted that minorities should have appeared in the 1983 and 1987 AERs and that their prior omission was due to an "oversight." (MMB Ex. 4, pp. 6-10, 15-16, and footnotes 5 and 10; Tr. 446). The Opposition contained a supporting Statement, signed by Bramlett, under penalty of perjury. (Tr. 443-444).

#### C. Inquiry No. 1

35. On July 3, 1989, the Commission staff sent the first of several official inquiry letters to Dixie. A copy was directed to Van Horn. The brief inquiry letter stated that Dixie's EEO Program provided insufficient information on which to make a determination that efforts were undertaken to attract minority applicants when there were job openings. The letter requested the following information for each position that Dixie filled between November 1, 1985, and November 1, 1988: (1) job title; (2) 395-B job classification; (3) the full or part-time status of

the position; (4) the date the position was filled; (5) the  
referral sources contacted; (6) the number of persons

the July 3, 1989, inquiry letter.<sup>9</sup> Although the inquiry letter sought specific information about all hires over a particular three year period, the response consisted of a copy of the Opposition to the NAACP Petition to Deny which covered only minority hires over the license term. (MMB Ex. 4).

39. Bramlett received a copy of Dixie's response after it was submitted to the Commission. He skimmed and then filed it away. Bramlett did not read the response to determine if it provided the information which the Commission had sought. (Tr. 466).

#### D. Inquiry No. 2

40. On March 15, 1991, the Commission's staff sent a second letter of inquiry to Dixie. A copy was directed to Marshall. The inquiry letter stated that Dixie's initial response had failed to provide the requested information and again requested the same seven categories of information. However, instead of seeking such information about all hires over a three year period, the follow-up letter covered all hires during only the one-year period from November 1, 1987, through November 1, 1988. (MMB Ex. 6). This was the same reporting period covered in Dixie's EEO Program.

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<sup>9</sup> Marshall was not involved in preparing Dixie's July 28, 1989, response. (Tr. 189).

41. Upon receipt of the second inquiry letter, Marshall examined Dixie's file at the law firm to ascertain what Dixie had filed in response to the Commission's first inquiry letter. (Tr. 196-197). She determined that the Commission's assessment -- that Dixie's first response did not provide the requested information -- was indeed accurate. (Tr. 198). She also believed that the Commission was seeking essentially the same information that had been the subject of the first inquiry letter, although the time period was narrower. (Tr. 196-197).

42. Bramlett learned about the second letter of inquiry in a telephone call from Marshall. (Tr. 467). Marshall explained to Bramlett that the letter covered the one-year period from November 1, 1987, to November 1, 1988. She neither read the letter to him, nor did she go down the list of each of the seven categories of information that the Commission sought. Marshall asked Bramlett if he had anything to add to what Dixie had already provided to the Commission, and Bramlett responded in the negative. (Tr. 196-197, 213, 468).

43. Bramlett was not concerned about the second inquiry letter. (Tr. 469). He felt secure knowing that a "big law firm" was working on Dixie's behalf. (Tr. 471-472). Although Bramlett wondered why the Commission was asking for information which he believed Dixie had already submitted, Bramlett did not go back and read the first letter of inquiry to determine why the



response incorrectly characterized the Commission's second inquiry letter as seeking recruitment information about all hires during the license term, rather than during the one year period from November 1, 1987, to November 1, 1988. It stated that "the licensee has reviewed the stations' records and determined that it has nothing more to add." (MMB Ex. 7, p. 2). The response further represented that over the course of the entire seven-year license term, the Stations had hired "approximately 20 new employees of which 7, or 35%, were African-Americans." (MMB Ex. 7, p. 4).

47. In fact, Dixie did not have "approximately 20" hires over the license term. Bramlett knew this in April 1991, when he authorized the Arent, Fox law firm to file the response on Dixie's behalf. (Tr. 477, 559). The reference to "approximately 20" hires originated with Marshall, who arrived at that number by independently combining figures which had been referenced in Dixie's Opposition pleading and EEO Program. She incorporated the number into Dixie's response without discussing it with Bramlett. (Tr. 216-217).

48. Marshall had been practicing communications law for more than a decade. However, she had no personal experience in the day-to-day operations of radio stations. Marshall believed it was reasonable for Dixie to have hired only approximately 20 employees over the seven year license term because WHOS(AM) and

WDRM(FM) were small stations compared to, for example, Station WMAL(AM), Washington, D.C., which appeared to Marshall to have had virtually no turnover of personnel given the longevity (35-years) of its former morning team "Harden and Weaver." (Dixie Ex. 2, p. 9).

E. Inquiry No. 3

49. In early October 1991, Hope Cooper ("Cooper") of the Commission's staff spoke with Marshall by telephone about Dixie's second response. Cooper informally inquired how Dixie could have had only "approximately 20" hires over the course of the entire seven-year license term when the Stations had a dozen hires during the 12-month period from November 1987 to November 1988, as reported in Dixie's EEO Program, and eight more hires during the 17-month period from February 1989 to July 1990, as reported in Dixie's second response.

50. Marshall related Cooper's concerns to Bramlett in one brief telephone conversation. Bramlett told Marshall that the variation in the number of hires from one year to the next was simply the result of fluctuations in the Stations' turnover rate. (Tr. 567).

51. Marshall prepared a response for Bramlett's review. She told Bramlett to read the entire document, and, if there were

no changes, to sign and return it to her for filing with the Commission. Bramlett initially testified that he read the document. However, he later conceded that he did not read any of it. (Dixie Ex. 1, p. 17; Tr. 573). Bramlett simply signed the supporting Statement and sent the document back to Marshall. (Tr. 572-573).

52. On October 15, 1991, Marshall filed Dixie's response to Cooper's informal inquiry. The response consisted of Marshall's cover letter attached to a three-page Statement signed by Bramlett under penalty of perjury. (MMB Ex. 8; Dixie Ex. 1, p. 17). The Statement summarized Cooper's concern with Dixie's prior representation about there having been only approximately 20 hires over the course of the entire licence term. The Statement asserted that the Stations' staff had again reviewed its records and determined that there was nothing more to add. The Statement further declared that the variation in the number of hires per year was attributable to changes in the Stations' turnover rate. (MMB Ex. 8, p. 2).

#### F. Inquiry No. 4

53. Following receipt of Dixie's third responsive submission, Cooper again questioned Marshall about the total number of hires over Dixie's license term. Cooper convinced Marshall that Dixie had to have hired more than "approximately



20" new employees during the seven-year period based on the changes in the Stations' employment profile as represented in Dixie's 1982 through 1989 AERs. (Dixie Ex. 1, p. 20, Tr. 237-238).

54. Marshall relayed her conclusions to Bramlett in December 1991. It was then that Bramlett first realized that Dixie had twice represented to the Commission that "approximately 20" persons had been hired by the Stations during the license term. (Tr. 580; Dixie Ex. 1, p. 20).

55. Bramlett was "surprised and a little bit shocked" at the revelation. However, he did not dwell on what Dixie had previously represented. Rather, he directed his attention toward attempting to amass all available information about Dixie's hires dating back to 1982, as requested by Marshall. (Tr. 580; Dixie Ex. 1, p. 21).

56. On January 2, 1992, the Commission mailed Bramlett a third inquiry letter.<sup>10</sup> (Tr. 591; MMB Ex. 9). The letter summarized the representations in each of Dixie's three previously-filed responsive pleadings. The letter also memorialized Cooper's December 1991 conversation with Marshall during which Cooper requested an explanation for the apparent

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<sup>10</sup> Because Cooper had previously made one inquiry by telephone, the January 2, 1992, letter represented the Commission's fourth inquiry to Dixie.